



HIE for Quality Improvement

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Why won't hospitals share information with us?

- Hospitals understand the importance of CQI
- Hospitals get many data request demands from multiple external organizations, often times it is not used
- Hospitals need to safely exchange data under state and federal regulations


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EMS Core Measures

- EMS Core Measures may be a place to start
 - Car-3- out of hospital cardiac arrests survival to emergency department discharge
 - Car-4- out of hospital cardiac arrests survival to hospital discharge
- Stroke and Stemi programs- San Mateo

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Perennial Question

Can a California hospital provide individually-identifiable patient medical information for the purpose of quality improvement to:

1. EMS providers, such as ambulance companies, and/or
2. LEMSAs or State EMSA

Without obtaining the written authorization of each patient (or legal representative)?


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Considerations in Determining Legality of Disclosure

Important factors: **RECIPIENT** of information (that is, who is it being disclosed to?) and **PURPOSE** of disclosure (why is it being disclosed?)

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Purpose: Quality Improvement

Quality assessment and improvement, outcomes evaluation, development of clinical guidelines, reviewing competence of health care professionals, and evaluating practitioner performance is considered by HIPAA to be "health care operations."

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Quality Improvement Disclosures

- We are not talking about disclosures for purposes of:
 - Diagnosis/treatment of the patient
 - Billing
 - Research (think IRB, patient informed consent)
 - Other purposes

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State and Federal Health Information Privacy Laws

California hospitals must comply with all:

- HIPAA
- Confidentiality of Medical Information Act (CMIA)
- Lanterman-Petris-Short Act (LPS)
- Other laws not relevant here

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HIPAA Preemption Rules

- Federal government intended to create a floor of privacy protection when enacting HIPAA
- HIPAA purposely and expressly did not pre-empt state laws that were more protective of the patient's privacy
- Therefore, providers must determine that a particular disclosure is permissible under both HIPAA and the applicable state law

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Big Picture Structure of Privacy Laws

- HIPAA, CMIA, and LPS have the same basic structure: a health care provider cannot disclose health information about a patient unless:
 - The law contains an exception that *requires* or *permits* the disclosure, or
 - The patient authorizes the disclosure

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Disclosures to EMS Providers: HIPAA

HIPAA permits a hospital to disclose PHI to another health care provider for the purposes of the recipient's health care operations IF:

- Each provider has or had a relationship with the patient and the medical information pertains to such relationship
- "Minimum necessary" standard applies – so what info can you disclose?

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Disclosures to EMS Providers: State Law

Patients that are brought to hospital EDs may be covered by either LPS or CMIA

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LPS

LPS applies to information and records obtained in the course of providing services to patients evaluated or treated under Div. 5 of W&I:

- Section 5150 et seq. (danger to self/others) - mental health disorder, inebriation
- Certified, judicially committed, court-ordered evaluation and treatment
- But not H&S 1799.111

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LPS (cont'd)

LPS also applies to information and records obtained in the course of providing services to patients receiving voluntary or involuntary MH services in a:

- State mental hospital
- County psychiatric ward, facility, hospital
- UC psychiatric hospital, unit, clinic (Langlely Porter, "Neuropsychiatric Institute, UCLA")

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LPS (cont'd)

- SNF with a special treatment program service unit for patients with chronic psychiatric impairments
- Community program funded by Bronzan-McCorquodale Act (W&I 5600-5778)
- Community program specified in W&I 4000-4390 or W&I 6000-6008
- Also, recipients of state developmental disability services (i.e., Regional Centers)

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CMIA

- CMIA is the general health information privacy law that applies to most patients brought to EDs by EMS providers
- If a patient isn't covered by LPS, he/she is covered by CMIA
- LPS is an express exception to CMIA
- Are you coding your pts as CMIA v LPS?

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Disclosures Under LPS

- No exception to the general prohibition that would allow disclosures to EMS providers for purposes of quality improvement (exceptions are listed in Welfare & Institutions Code Sections 5328-5328.9)
- Even though these disclosures are permitted by HIPAA, they are prohibited by LPS

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Disclosures Under CMIA

- No clear express authority (list of exceptions at Civil Code 56.10(c).
- Two closest possibilities: 56.10(c)(4) or 56.10(c)(14)

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Civil Code Section 56.10(c)(4)

The information may be disclosed to ... contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the ... contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

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Civil Code Section 56.10(c)(4)

- This provision generally interpreted to allow a hospital to disclose info to *its own* insurers, self-insurance personnel, and risk management consultants, med mal attorneys, etc.
- Also: does performance improvement = quality of care?

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Civil Code Section 56.10(c)(4)

- Is this provision broad enough for a hospital to provide info to a “person or organization responsible for professional liability that a provider [the ambulance company] may incur?”
- EMSA memo of 2/26/14 did not cite this provision as authorizing disclosure
- Open legal question. If no, then a disclosure = a breach

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Civil Code Section 56.10(c)(14)

- “The information may be disclosed when the disclosure is otherwise specifically authorized by law...”
- Is the effect of this provision to authorize a disclosure under the CMIA if that disclosure is specifically authorized by HIPAA?

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Civil Code Section 56.10(c)(14)

- Remember: Federal government intended to create a floor of privacy protection when enacting HIPAA
- HIPAA purposely and expressly did not pre-empt state laws that were more protective of the patient’s privacy
- Can this CMIA provision actually pull in HIPAA provisions so as to make information MORE “disclosable?”

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Civil Code Section 56.10(c)(14)

- Answer: we don’t know.
- Privacy experts do not agree
- Cal/OHI and Cal/OHII lawyers over the years have had inconsistent opinions (both by the same lawyer on different topics (EMS v. clergy), and by different lawyers on the same topic)
- A judge would not have to defer to Cal/OHII lawyer’s opinion

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Bottom Line

Hospital disclosure to EMS provider:

- Allowed by HIPAA, but only give information about that EMS provider's patients (do you code which ambulance company brings the patient?)
- Not allowed by LPS. Delete any information related to these patients (probably easiest to delete all MH pts)
- Risky under CMIA – we just don't know

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Moving On ... Disclosures to LEMSAs and EMSA

HIPAA permits a provider to disclose information to a health oversight agency for *oversight activities authorized by law*, [different from quality improvement] including: audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system; ...

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; ...

- Under California law, what oversight authority do LEMSAs and EMSA have over hospitals? What information is "minimally necessary" to disclose for purposes of this oversight? Base station hospital? Trauma designation?

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Disclosures to LEMSAs and EMSA

LPS has no exception that allows a hospital to disclose information for the purpose of health quality improvement to LEMSAs or EMSA. In the context of health oversight, LPS authorizes information to be given only to:

1. Authorized licensing personnel of the State Department of Health Services (now CDPH) who are licensed or registered health professionals;
2. Authorized representatives of the State Department of Social Services for inspection and licensure of health facilities; and
3. Professional licensing boards when the Director of Mental Health believes there's been a violation of a law subject to the jurisdiction of that board.

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Disclosures to LEMSAs and EMSA Under CMIA

- No clear express authority (list of exceptions at Civil Code 56.10(c).
- Two closest possibilities: 56.10(c)(5) or 56.10(c)(14)

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Civil Code Section 56.10(c)(5)

"The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. *However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law*, nor shall that information be further disclosed by the recipient in a way that would violate this part."

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Civil Code Section 56.10(c)(14)

- "The information may be disclosed when the disclosure is otherwise specifically authorized by law..."
- Same question as before

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Bottom Line

Hospital disclosure to LEMSAs or EMSAs:

- HIPAA: Not clear what PHI may be disclosed, if any
- Not allowed by LPS. Delete any information related to these patients.
- Questionable/risky under CMIA

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Future Action

EMS providers, LEMSAs, EMSAs, and hospitals should work together to determine precisely what data is appropriate to share for purposes of quality improvement (“minimum necessary”)

- Determine who will pay for data collection, analysis
- Consider authorizing legislation

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Thank You

- Questions?
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